

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RYAN SYLVESTER and ANGELA
ELLIS,

Plaintiffs,

v.

SACRAMENTO COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendants.

No. 2:20-cv-01797-TLN-CKD

ORDER

This matter is before the Court on Defendants Scott Jones ("Jones"), in his official capacity as Sacramento County Sheriff; Sacramento County Deputies Sheriff Timothy Mullin ("Mullin"), Dick Mah ("Mah"), and Bobi Griggs ("Griggs"), in their individual capacities; the County of Sacramento; and the Sacramento County Sheriff's Department's (collectively, "Defendants") Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), or in the alternative, Motion to Strike under Federal Rule of Civil Procedure 12(f). (ECF No. 31.) Plaintiffs Ryan Sylvester and Angela Ellis (collectively, "Plaintiffs") filed an opposition (ECF No. 32), and Defendants filed a reply (ECF No. 34).

Also before the Court is Plaintiffs' Motion to Amend their Third Amended Complaint ("TAC"). (ECF No. 35.) Defendants filed an opposition to the motion to amend. (ECF No. 36.) Plaintiffs did not file a reply.

1 For the reasons set forth below, the Court GRANTS Defendants’ Motion to Dismiss and
2 DENIES Defendants’ Motion to Strike. (ECF No. 31.) The Court DENIES Plaintiffs’ Motion to
3 Amend. (ECF No. 35.)

4 **I. FACTUAL AND PROCEDURAL BACKGROUND**

5 This case arises from the death of an unarmed pretrial detainee, Ryan Ellis (“Ellis”).
6 Plaintiffs are Ellis’ parents and allege they received a 141-page investigative report from the
7 Sacramento County Sheriff’s Department (“Report”) that outlines Defendants’ version of the
8 circumstances that led to Ellis’ death. (ECF No. 30 at ¶¶ 3–4, 16–28.) The Report details a series
9 of events that began after Griggs, Mah, and Mullin responded to a call from Ellis’ former partner
10 that Ellis was violating the terms of his restraining order. (*Id.* at ¶¶ 16–28.)

11 According to the Report, the officers searched and handcuffed Ellis upon arriving at the
12 scene and placed Ellis in the back of Griggs’ patrol car. (*Id.* at ¶ 18.) Ellis became increasingly
13 agitated during transportation to the county jail and reportedly kicked out one of the rear windows
14 of Griggs’ patrol car and propped his body out of the open window. (*Id.* at ¶¶ 21–22.) Griggs
15 began alternating between accelerating and decelerating to keep Ellis off balance to prevent him
16 from escaping through the window. (*Id.* ¶ 22.) Griggs’ erratic driving continued for some time
17 until Ellis allegedly jumped head-first out of the window during a point of deceleration, resulting
18 in his death. (*Id.*)

19 Plaintiffs contest the accuracy of the Report and present an alternate version of events. In
20 their view, Ellis could not have kicked out the back window of Griggs’ patrol car and jumped out
21 of a moving vehicle while handcuffed because he was “untrained in acrobatics, was a long-
22 standing meth addict, out of shape, and had little athletic ability[,]” among other things. (*Id.* at ¶
23 42.) Instead, they believe Griggs, Mah, and Mullin murdered Ellis and covered it up pursuant to a
24 county policy of obscuring officer-involved fatalities when the deceased is African American.
25 (*Id.* at ¶ 37.) Plaintiffs allege Griggs intentionally turned off her cameras and took a detour to a
26 discreet location where the officers beat Ellis to death before dragging his body to the side of the
27 road to make it look like an accident. (*Id.* at ¶¶ 24, 47, 52, 58.)

28 In May 2019, Plaintiffs, proceeding in pro per, filed a Complaint in the Sacramento

1 County Superior Court against the Sacramento County Sheriff's Department. (*See* ECF No. 29 at
2 2 n.3 (taking judicial notice of Plaintiffs' Complaint); ECF No. 17-2, Ex. B (Plaintiffs'
3 Complaint).) The following month, Plaintiffs — now represented by counsel — amended their
4 Complaint to add Jones and the County of Sacramento as Defendants and causes of action under
5 42 U.S.C. § 1983 and Cal. Civ. Code § 51. (ECF No. 1-1.) Jones, the Sacramento County
6 Sheriff's Department, and the County of Sacramento removed the action to this Court. (ECF No.
7 1.)

8 In August 2021, Plaintiffs filed their Second Amended Complaint ("SAC") after receiving
9 leave from the Court, adding Griggs, Mah, and Mullin as Defendants and realleging causes of
10 action under 42 U.S.C. § 1983 and Cal. Civ. Code § 51. (ECF Nos. 14, 15.) Defendants moved
11 to dismiss the SAC under Federal Rule of Civil Procedure 12(b)(6). (*See* ECF Nos. 17, 24.) The
12 Court dismissed Plaintiffs' § 1983 claim with leave to amend and declined to exercise
13 supplemental jurisdiction over their state law claim. (ECF No. 29.) Specifically, the Court found
14 that: (1) Jones is a redundant Defendant because he is only sued in his official capacity and the
15 County of Sacramento and its Sheriff's Department are already named as Defendants; (2)
16 Plaintiffs lack standing to assert a § 1983 claim for purported violations of Ellis' Fourth and
17 Fourteenth Amendment rights; (3) Plaintiffs' § 1983 claim for a purported violation of Ellis' Fifth
18 Amendment right to due process is not cognizable because that amendment only constrains the
19 federal government — not counties; and (4) Plaintiffs' claim under *Monell v. Dep't of Soc. Servs.*,
20 436 U.S. 658 (1978) (hereinafter *Monell* claim) failed as a matter of law because Plaintiffs did not
21 sufficiently allege Defendants had a custom, policy, or practice that violated Ellis' federal rights.
22 (ECF No. 29 at 7–11.) The Court admonished Plaintiffs that they have one "final opportunity to
23 amend" and that "any amended filing must comply with [the Court's] Order." (*Id.* at 12.)

24 On March 10, 2023, Plaintiffs filed the operative TAC, realleging causes of action under
25 42 U.S.C. § 1983 and Cal. Civ. Code § 51 and including Jones as a Defendant. (*See* ECF No.
26 30.) Defendants filed the instant motions to dismiss, or alternatively strike, the TAC on March
27 29, 2023. (ECF No. 31.)

28 / / /

1 On June 1, 2023, Plaintiffs filed the instant motion to amend their TAC to include
2 additional exhibits and allegations regarding standing. (*See* ECF No. 35.)

3 II. STANDARD OF LAW

4 A motion to dismiss for failure to state a claim upon which relief can be granted under
5 Federal Rule of Civil Procedure (“Rule”) 12(b)(6) tests the legal sufficiency of a complaint.
6 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Rule 8(a) requires that a pleading contain
7 “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
8 Civ. P. 8(a); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). Under notice pleading in
9 federal court, the complaint must “give the defendant fair notice of what the . . . claim is and the
10 grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (internal
11 citation and quotations omitted). “This simplified notice pleading standard relies on liberal
12 discovery rules and summary judgment motions to define disputed facts and issues and to dispose
13 of unmeritorious claims.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

14 On a motion to dismiss, the factual allegations of the complaint must be accepted as true.
15 *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court must give the plaintiff the benefit of every
16 reasonable inference to be drawn from the “well-pleaded” allegations of the complaint. *Retail*
17 *Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege
18 “‘specific facts’ beyond those necessary to state his claim and the grounds showing entitlement to
19 relief.” *Twombly*, 550 U.S. at 570 (internal citation omitted).

20 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of
21 factual allegations.” *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986).
22 While Rule 8(a) does not require detailed factual allegations, “it demands more than an
23 unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A
24 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the
25 elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678
26 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
27 statements, do not suffice.”). Thus, “[c]onclusory allegations of law and unwarranted inferences
28 are insufficient to defeat a motion to dismiss” for failure to state a claim. *Adams v. Johnson*, 355

1 F.3d 1179, 1183 (9th Cir. 2004) (citations omitted). Moreover, it is inappropriate to assume the
2 plaintiff “can prove facts that it has not alleged or that the defendants have violated the . . . laws
3 in ways that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State*
4 *Council of Carpenters*, 459 U.S. 519, 526 (1983).

5 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough
6 facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim
7 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
8 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at
9 680. While the plausibility requirement is not akin to a probability requirement, it demands more
10 than “a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. This plausibility
11 inquiry is “a context-specific task that requires the reviewing court to draw on its judicial
12 experience and common sense.” *Id.* at 679. Thus, only where a plaintiff fails to “nudge [his or
13 her] claims . . . across the line from conceivable to plausible[,]” is the complaint properly
14 dismissed. *Id.* at 680 (internal quotations omitted).

15 In ruling on a motion to dismiss, a court may consider only the complaint, any exhibits
16 thereto, and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201.
17 *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Isuzu Motors Ltd. v.*
18 *Consumers Union of U.S., Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998); *see also Daniels-*
19 *Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010) (the court need not accept as true
20 allegations that contradict matters properly subject to judicial notice).

21 If a complaint fails to state a plausible claim, “[a] district court should grant leave to
22 amend even if no request to amend the pleading was made, unless it determines that the pleading
23 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,
24 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995));
25 *see also Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009) (finding no abuse of discretion in
26 denying leave to amend when amendment would be futile). Although a district court should
27 freely give leave to amend when justice so requires under Rule 15(a)(2), “the court’s discretion to
28 deny such leave is ‘particularly broad’ where the plaintiff has previously amended its complaint.”

1 *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 520 (9th Cir. 2013) (quoting
2 *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004)).

3 **III. ANALYSIS**

4 Defendants raise seven main arguments in their motion to dismiss: (1) Plaintiffs lack
5 standing to bring a wrongful death or survival action; (2) Plaintiffs' § 1983 claim should be
6 dismissed; (3) Griggs, Mah, and Mullin are entitled to qualified immunity; (4) Jones is a
7 redundant Defendant who should be dismissed; (5) Plaintiffs' second cause of action under Cal.
8 Civ. Code § 51 should be dismissed; (6) Plaintiffs' request for injunctive relief should be stricken
9 or dismissed for lack of standing and failure to allege an irreparable injury; and (7) Plaintiffs'
10 claims should be dismissed because they are based on conclusory and groundless allegations that
11 are contradicted by Plaintiffs' statements and exhibits.¹ (ECF No. 31-1 at 10–22.)

12 **A. Standing to Bring a Wrongful Death or Survival Action**

13 As a threshold matter, Defendants argue Plaintiffs' TAC should be dismissed in its
14 entirety because Plaintiffs lack standing to assert a wrongful death or survival action under
15 California law. (ECF No. 31-1 at 10–13.) Defendants maintain Plaintiffs have not made the
16 requisite showing that they are the personal representatives or heirs of Ellis or otherwise
17 demonstrate they are entitled to bring a wrongful death or survival action. (*Id.*) In opposition,
18 Plaintiffs contend they have standing to pursue a wrongful death action under § 1983 as Ellis's
19 parents.² (ECF No. 32 at 7–10.)

20
21 ¹ Because the Court dismisses Plaintiffs' § 1983 claim as to all Defendants, the Court refers
22 to Defendants collectively (unless otherwise noted) and declines to address Griggs, Mah, and
23 Mullin's argument that they are entitled to qualified immunity. *See Cnty. of Sacramento v. Lewis*,
24 523 U.S. 833, 841 n.5 (1998) (“[T]he better approach to resolving cases in which the defense of
qualified immunity is raised is to determine first whether the plaintiff has alleged a deprivation of
a constitutional right at all.”). Likewise, Defendants' argument that Jones is a redundant
Defendant is moot, and therefore, the Court declines to address it.

25 ² Plaintiffs appear to conflate a wrongful death action under California law (*see* Cal. Civ.
26 Proc. Code § 377.60 et seq.) with a § 1983 claim premised on a killing in violation of the
27 Fourteenth Amendment's Due Process Clause. The Court nevertheless construes Plaintiffs'
28 pleadings to argue the latter. *See Ass'n for L.A. Deputy Sheriffs v. Cnty. of L.A.*, 648 F.3d 986,
991 (9th Cir. 2011) (on a motion to dismiss, all reasonable inferences must be drawn in the
plaintiff's favor).

1 A claim of wrongful death is a statutory cause of action under California law. *See* Cal.
 2 Civ. Proc. Code § 377.60 et seq.; *Ceja v. Rudolph & Sletten, Inc.*, 56 Cal. 4th 1113, 1118 (2013)
 3 (wrongful death actions are statutory in origin and exist only insofar as the Legislature declares).
 4 Although Plaintiffs reference a wrongful death action in their TAC, their first cause of action is a
 5 § 1983 claim premised on a violation of the Fourteenth Amendment, not a state wrongful death
 6 claim. (ECF No. 30 at ¶¶ 29–84; ECF No. 32 at 5 (“(T)he current claim is based on the
 7 substantive due process clause of the Fourteenth Amendment.”).) A survival action, on the other
 8 hand, is one where a plaintiff asserts the rights of a deceased person. *See* Cal. Civ. Proc. Code §
 9 377.20 et seq.; *Moreland v. Las Vegas Metro. Police Dep’t*, 159 F.3d 365, 369 (9th Cir. 1998), *as*
 10 *amended* (Nov. 24, 1998). As discussed below, however, Plaintiffs purport to assert their own
 11 rights, not Ellis’.

12 Accordingly, Defendants’ motion to dismiss the TAC for lack of standing to assert a
 13 wrongful death or survival action is DENIED.

14 B. Section 1983 Claim³

15 Plaintiffs’ first cause of action under 42 U.S.C. § 1983 alleges “Defendants’ conduct in
 16 wrongfully killing [Ellis] on May 4, 2017[,] in the fields behind the car wash on Watt [Avenue],
 17 constitute[s] a violation of Plaintiffs’ substantive due process right[,] including the right of
 18 familial relationship with the deceased.” (ECF No. 30 at ¶ 58.) Plaintiffs further allege
 19 Defendants’ conduct in refusing to ask Ellis’s family “questions about what they knew about the
 20 killing” and their “failure to provide a copy of the Sheriff’s investigative reports was a substantial
 21 factor in bringing about a violation” of Plaintiffs’ due process rights. (*Id.* at ¶ 61.)

22 ///

24 ³ Plaintiffs appear to allege separate constitutional claims under the Fourth, Fifth, Eighth,
 25 and Fourteenth Amendments to the United States Constitution. (*See* ECF No. 30 at ¶¶ 29–84.)
 26 Defendants move to dismiss all these claims. (*See* ECF No. 31-1 at 13–16.) In their opposition,
 27 however, Plaintiffs clarify their § 1983 claim is brought only under the substantive component of
 28 the Due Process Clause of the Fourteenth Amendment. (ECF No. 32 at 5–6.) Accordingly, the
 Court only addresses Defendants’ motion to dismiss Plaintiffs’ Fourteenth Amendment
 substantive due process claim.

1 Defendants argue Plaintiffs' Fourteenth Amendment due process claim fails because it is
2 derived from a violation of Ellis's rights, and Plaintiffs do not allege any unconstitutional conduct
3 was directed toward them. (ECF No. 31-1 at 14–15.) Defendants further contend Plaintiffs'
4 claim fails because their allegations are conclusory and are contradicted by other allegations in
5 the TAC and the exhibits submitted therewith. (*Id.* at 21–22.)

6 In opposition, Plaintiffs contend they are asserting their own rights, not Ellis', and have
7 sufficiently stated a claim that the killing of Ellis was unlawful. (ECF No. 32 at 6–7, 15–17.) To
8 support their position, Plaintiffs incorporate excerpts from the TAC — that restate the allegations
9 that Defendants unlawfully killed Ellis (*see id.* at 10–17) — but do not otherwise provide any
10 relevant legal authority to rebut Defendants' contentions that they have failed to state a claim.

11 The Court agrees with Defendants and finds Plaintiffs have failed to state a due process
12 claim under the Fourteenth Amendment. Plaintiffs purport to assert their own rights under the
13 Due Process Clause, but they do not specify which right was allegedly violated or the conduct by
14 Defendants that led to the violation of their rights.⁴ Instead, Plaintiffs focus on Defendants'
15 conduct toward *Ellis*. (*See* ECF No. 30 at ¶¶ 29–84.) To the extent Plaintiffs purport to assert
16 their right to familial association, Plaintiffs' allegations are conclusory, and they offer no legal
17 authority or facts to support an inference they are entitled to relief. *See Iqbal*, 556 U.S. at 678
18 (complaint must plead sufficient factual content to permit the court to draw the reasonable
19 inference that the defendant is liable for the misconduct alleged). In any event, Plaintiffs
20 abandoned this argument by not raising it in their opposition brief. *Jenkins v. Cnty. of Riverside*,
21 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (plaintiff abandoned claim by not raising it in opposition
22 to motion).

23 The Court previously dismissed Plaintiffs' Fourteenth Amendment claim for failing to
24 allege unconstitutional conduct directed toward them. (*See* ECF No. 29 at 9.) The deficiency

25 ⁴ The only conduct Plaintiffs allege that is directed toward them is Defendants' purported
26 failure to ask Ellis' family questions about Ellis' death and their failure to furnish Plaintiffs copies
27 of the investigative reports. (*See* ECF No. 30 at ¶ 61.) These allegations are conclusory, and
28 Plaintiffs offer no legal authority to support their contention that these inactions by Defendants
violate the Fourteenth Amendment. Accordingly, Plaintiffs have failed to demonstrate they are
entitled to relief. *See Iqbal*, 556 U.S. at 678

1 remains. Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiffs’ Fourteenth
2 Amendment claim without leave to amend.

3 C. Monell Claim⁵

4 Plaintiffs allege Defendants have a policy, practice, or custom of covering up white-on-
5 black police killings by refusing to provide investigative reports to the parents of the deceased.
6 (ECF No. 30 at ¶¶ 5–6, 37, 50–51, 54.) They maintain Defendants’ policy obstructs their ability
7 to obtain any investigative reports, violating 18 U.S.C. § 1510 and Plaintiffs’ rights to procedural
8 and substantive due process under the Fifth and Fourteenth Amendments and equal protection
9 under the Fourteenth Amendment. (*Id.* at ¶¶ 50–55, 59–61.)

10 Defendants argue Plaintiffs’ *Monell* claim is insufficiently pled and should be dismissed
11 on that basis. (ECF No. 31-1 at 16.) Specifically, Defendants contend Plaintiffs fail to identify a
12 custom or policy, explain how the custom or policy was deficient and how it caused Plaintiffs
13 harm, and how the custom or policy amounted to deliberate indifference. (*Id.*) Plaintiffs disagree
14 and incorporate by reference portions of their TAC, which they argue sufficiently states a *Monell*
15 claim. (ECF No. 32 at 17–19.)

16 “A government entity may not be held liable under 42 U.S.C. § 1983, unless a policy,
17 practice, or custom of the entity can be shown to be a moving force behind a violation of
18 constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing
19 *Monell*, 436 U.S. at 694). “[A] policy is ‘a deliberate choice to follow a course of action ... made
20 from among various alternatives by the official or officials responsible for establishing final
21 policy with respect to the subject matter in question.’” *Oviatt By and Through Waugh v. Pearce*,
22 954 F.2d 1470, 1477 (9th Cir. 1992) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483
23 (1986)). “A ‘custom’ for purposes of municipal liability is a ‘widespread practice that, although
24 not authorized by written law or express municipal policy, is so permanent and well-settled as to
25

26 ⁵ As the Court previously noted, Plaintiffs contend their first cause of action is only a direct
27 claim under the Due Process Clause of the Fourteenth Amendment. (*See* ECF No. 32 at 5–6.) In
28 their opposition, however, Plaintiffs oppose Defendants’ motion to dismiss their *Monell* claim.
(*Id.* at 17–19.) Accordingly, the Court construes Plaintiffs’ first cause of action to also assert a
claim under *Monell*, 436 U.S. at 658.

1 constitute a custom or usage with the force of law.” *Young v. City of Visalia*, 687 F. Supp. 2d
 2 1141, 1147 (E.D. Cal. 2009) (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988).
 3 “Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be
 4 founded upon practices of sufficient duration, frequency and consistency that the conduct has
 5 become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir.
 6 1996), *holding modified by Navarro v. Block*, 250 F.3d 729 (9th Cir. 2001). After establishing
 7 one of the methods of liability, “a plaintiff must also show that the circumstance was (1) the cause
 8 in fact and (2) the proximate cause of the constitutional deprivation.” *Id.*

9 The Court agrees with Defendants and finds Plaintiffs have failed to establish *Monell*
 10 liability. Plaintiffs’ *Monell* claim is premised on Defendants’ purported failure to ask them
 11 questions about Ellis’s death and furnish them with documents related thereto. But Plaintiffs do
 12 cite any legal authority to support an inference that they have a constitutional right to receive
 13 those documents or to be consulted during the investigation into Ellis’ death. *See Iqbal*, 556 U.S.
 14 at 678; *Saved Magazine v. Spokane Police Dep’t*, 19 F.4th 1193, 1201 (9th Cir. 2021) (rejecting a
 15 theory of *Monell* liability when no case law was cited). Nor do Plaintiffs identify, beyond their
 16 threadbare allegations, the policy or custom of which they complain. Plaintiffs’ allegations
 17 amount to no more than an isolated incident, which is insufficient to form the basis of *Monell*
 18 liability for an improper custom or practice. *Saved Magazine*, 19 F.4th at 1201.

19 The Court previously dismissed Plaintiffs’ *Monell* claim for failing to sufficiently allege a
 20 custom or policy. (See ECF No. 29 at 10–11.) The deficiency remains. Accordingly, the Court
 21 GRANTS Defendants’ motion to dismiss Plaintiffs’ *Monell* claim without leave to amend.⁶

22
 23 ⁶ Plaintiffs move to amend their TAC to file their Fourth Amended Complaint. (See ECF
 24 No. 35.) The proposed amendments purport to cure the standing deficiencies in the TAC by
 25 adding allegations that Ellis separated from his former wife and had no children, presumably to
 26 satisfy the requirements for bringing a survival action. (*Id.* at 4–7.) These standing deficiencies
 27 are only relevant insofar as Plaintiffs attempt to assert *Ellis*’s rights. (See ECF No. 29 at 8–9.)
 28 However, Plaintiffs repeatedly argue they are asserting their own rights, not *Ellis*’. (ECF No. 32
 at 6, 15–16.) Thus, granting leave to amend would be futile here. Accordingly, the Court
 DENIES Plaintiffs’ motion to amend. *Theme Promotions, Inc. v. News Am. Mktg. FSI*, 546 F.3d
 991, 1010 (9th Cir. 2008) (“[L]eave to amend will not be granted where an amendment would be
 futile.”).

D. State-Law Claim

Plaintiffs' second cause of action is a claim under Cal. Civ. Code § 51 (Unruh Act). (ECF No. 30 at ¶¶ 85–112.) Defendants move to dismiss this claim on the grounds that Plaintiffs fail to allege compliance with the Tort Claims Act and a violation of the Americans with Disabilities Act. (ECF No. 31-1 at 18–20.) However, because this matter is before the Court based on federal question jurisdiction and all federal claims have been dismissed, the Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state-law claim. 28 U.S.C. § 1367(c)(3); *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (affirming the district court's declination to exercise supplemental jurisdiction over the remaining state-law claims after all federal claims were dismissed).

Accordingly, the Court DISMISSES Plaintiffs' claim under the Unruh Act without prejudice to bringing this claim in one of the Superior Courts of California.⁷

IV. CONCLUSION

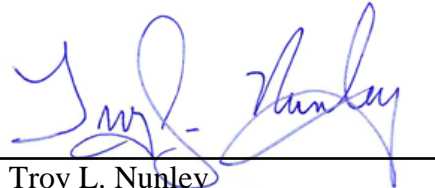
The Court was clear in its previous Order that Plaintiffs' § 1983 claims were deficient. (See ECF No. 29.) Nevertheless, the Court granted Plaintiffs one final opportunity to cure those deficiencies in an amended complaint. (See ECF No. 29.) The deficiencies remain. For the foregoing reasons, the Court GRANTS Defendants' Motion to Dismiss and DISMISSES Plaintiffs' § 1983 claim (including their *Monell* claim) without leave to amend. (ECF No. 31.) The Court declines to exercise supplemental jurisdiction over Plaintiffs' state-law claim and DENIES all other motions. (ECF Nos. 31 (Motion to Strike), 35 (Motion to Amend).) The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

⁷ Related to their *Monell* claim, Plaintiffs allege Defendants' policy, practice, or custom of covering up white-on-black police killings violates 18 U.S.C. § 1510 and the Fifth and Fourteenth Amendments. (ECF No. 30 at ¶¶ 50–55, 59–61.) Plaintiffs contend this purportedly unlawful policy is ongoing and they seek to enjoin Jones from enforcing it under *Ex parte Young*, 209 U.S. 123 (1908). (*Id.* at ¶¶ 55–57.) Because the Court has dismissed both of Plaintiffs' claims, however, their request for injunctive relief is moot. See, e.g., *Boland, Inc. v. Rolf C. Hagen (USA) Corp.*, 685 F. Supp. 2d 1094, 1112 (E.D. Cal. 2010) (injunctive relief is a remedy, not an independent cause of action).

1 Date: December 12, 2023

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Troy L. Nunley
United States District Judge